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INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Report on the independence of the judiciary and the protection of practising lawyers, prepared by Mr. Louis Joinet, in accordance with resolution 1990/23 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

Addendum

Note by the Special Rapporteur

I have received from the Government of Turkey information on cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers dealt with in the report. The cases of measures and practices concerning the independence of the judiciary and the protection of practising lawyers in that country are dealt with in paragraphs 193 to 196, 229 and 273 to 276 of the report (E/CN.4/Sub.2/1991/30). The communication received from the Government of Turkey is reproduced below in extenso.

GE.91-12549/6859a

TURKEY

[9 July 1991]

Sezin Atmaci, Dilek Posut and Rasim Os

1. The relevant Turkish authorities have not received any complaint or allegation regarding the mistreatment of the above-mentioned persons on 20 April 1990, as mentioned in the note of the Special Rapporteur of 13 June 1991.

Ulutan Gün, Fethiye Peksen, Hasan Hüseyin Reyhan, Hediye Yarayici

2. The relevant authorities have received no complaint regarding the mistreatment of the above-mentioned persons, as alleged in the report of the Special Rapporteur.

3. The lawyers bearing the names Esin F. Kalas, Bedçi Yarayici, Fethiye Peksen, Zerrin Sari, Ulutan Gün, Mine Abali and Murat Demir have submitted to the relevant authorities a petition dated 16 May 1990, regarding their client and colleague named Fuat Erdogan. In this petition, it was claimed that Mr. Kemal Ayhan, the Public Prosecutor of the Ankara State Security Court, had not fulfilled the necessary formalities concerning a case in which their client was involved.

Emin Deger

4. The 4th High Criminal Court of Ankara has sentenced the said person to 10 months of imprisonment for having insulted the Security Forces of the State in the petitions he addressed to the Ministries of Interior and Justice, and the Office of the Governor of Ankara, with regard to the alleged mistreatment of his client by the police. At present, the above-mentioned decision is being examined by the Court of Appeal.

Hasan Hüseyin Reyhan

5. His allegations of mistreatment have been duly examined and rejected by the competent authorities. On the other hand, the said person has been acquitted by the Malatya State Security Court of the charges of cooperation with an illegal terrorist organization.

The case of the Istanbul Bar Association

6. This case concerns the membership of Mr. Alp Selek in the said organization. On 27 November 1986, the Istanbul Bar Association decided to keep the name Alp Selek on its list. However, on 21 May 1987, it took the decision to delete the said name from the Bar's list. On 14 November 1989, the Executive Council of the Istanbul Bar Association once more discussed the issue and returned to the 1986 decision. The Ministry of Justice did not see fit to approve the latest decision of the Executive Council of the Istanbul Bar Association. Unfortunately, on 18 January 1990 the said body decided not to abide by the ruling of the Minsitry of Justice. Since this decision was in contradiction with article 77 of Law No. 1136 concerning lawyers, on

13 July 1990 the Public Prosecutor of Istanbul opened a public lawsuit against the Bar Association in question. On 27 and 28 October 1990, the General Assembly of the Istanbul Bar Association held its regular plenary session, at which a new president and members of the Executive Council were elected. As the public lawsuit was related to the president and members whose terms of office had expired, the Court dismissed the case on 19 November 1990.

Hasan Sahin and Mustafa Gürbüz Ozaltinli

7. On 28 May 1990, the said persons were taken into custody on charges of affiliation with an illegal organization. On 4 June 1990, they were released pending trial. On 25 April 1991, they were acquitted as a consequence of the abolition of articles 141 and 142 of the Penal Code.

Orhan Dogan

8. The matter has been under investigation by the relevant authorities since 22 June 1990. It has not been thus far possible to find any evidence which could substantiate that the aim of the bomb explosion in question was to intimidate Mr. Orhan Dogan.

The Province of Diyarbakir

9. Since the establishment of the Diyarbakir Security Court in 1984, no complaint or allegation has been received regarding the mistreatment of lawyers. Contacts between the lawyers and their clients in custody are regulated by the provisions of article 136 of the Code of Criminal Procedure and the Circular of the Prime Minister's Office dated 26 September 1989, No. 08-3-383-18873. Following the issuance of the said circular, the relevant authorities have received from 29 lawyers requests to have access to their clients. None of these requests have been rejected.